IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8724 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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VIJAY BAHADUR @ RAJU @ BAU

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 8724 of 2002

MS BANNA DATTA for the Petitioner

MR L.B.DABHI, AGP for the Respondents

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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 27/11/2002

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), the Police Commissioner, Surat

City, vide order dated May 10, 2002 (Annexure-A to the petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention order dated May 10, 2002 manifest that the petitioner is a 'Dangerous Person' within the meaning of Section 2(c) of the Act, as two cases for commission of the offences under the IPC are registered against the petitioner which are pending investigation. Besides this, statements of two anonymous witnesses are recorded in an unregistered offences, and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order and therefore, power under Section 9(2) of the Act is exercised by the detaining authority by not disclosing the names of the witnesses and accordingly detained the petitioner/detenu.

3. By filing this petition under Article 226 of the Constitution, petitioner has assailed the impugned order of detention on various grounds and prayed to issue appropriate writ, order or direction quashing and setting aside the impugned order of detention and setting him at liberty forthwith.

4. The petitioner has challenged the order of detention on various grounds. Ms. Banna Datta, learned advocate for the petitioner has restricted her arguments only on the aspect of delay in recording the order of detention without recording satisfactory explanation on the part of the detaining authority and therefore, order of detention is vitiated. In order to substantiate her argument she contended that in the order of detention, the detaining authority has considered two cases for commission of the offences under the IPC registered on January 1, 2002 and the order of detention came to be passed on May 10, 2002, therefore, there is a delay of about four months in passing the order of detention which is not explained by the detaining authority. She, therefore, urged to allow the petition by quashing and setting aside the order of detention and setting the petitioner at liberty forthwith.

5. Mr. L.B.Dabhi, learned AGP appeared on behalf of the respondents and has opposed the petition by making oral submissions. He contended that the delay of four months cannot be called a delay which entitles the petitioner to set at liberty forthwith by quashing and setting aside the order impugned. He, therefore, urged that there is no valid ground available to the petitioner to challenge the order of detention. He, therefore,

urged to dismiss the petition.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have perused the averments made in the petition and the documents annexed therewith. I have also considered the impugned order of detention passed by the detaining authority.

7. There is no manner of doubt that two cases are registered against the petitioner for commission of offences under IPC on January 20, 2002 and the order of detention came to be passed on May 10, 2002. Therefore, admittedly, there is a delay of about four months in passing the order of detention. It cannot be laid down as an absolute proposition of law that every delay in passing the order of detention after registering the cases for commission of the offences would entitle the detenu to set him at liberty forthwith if the delay caused in passing the order is sufficiently and satisfactorily explained by the detaining authority. In the instant case, the detaining authority has not explained the delay caused in passing the order either in the impugned order or by filing the affidavit-in-reply, therefore, the petitioner would be entitled to claim that the delay caused in passing the order would vitiate the order of detention.

8. I am fortified in my above view by the judgement of the Supreme Court in the case of ANAND PRAKASH Vs. STATE OF U.P., AIR 1990 SC 516, wherein, it has been observed by the Supreme Court that if no satisfactory explanation for delay in passing the order of detention is given, the detention is vitiated.

9. A similar view is expressed by this Court in the case of ELESH NANDUBHAI PATEL Vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, 1997 (1) GLH 381.

10. Applying the principles enunciated by the Supreme Court and this Court in the above referred to two judgements to the facts of the present case, it is clear that the present case is identical to the cases referred to above. At the cost of repetition, be it stated that in the present case also two cases came to be registered against the petitioner for the offences under the IPC on January 20, 2002 whereas the order of detention came to be passed on May 10, 2002, and therefore, unexplained delay of almost four months makes the ground of detention not proximate and vitiate the order of detention itself.

11. Seen in the above context, on the ground of delay

alone, the order of detention is vitiated.

12. For the foregoing reasons, petition succeeds and is accordingly allowed. The impugned order of detention dated May 10, 2002 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia,J)

Jayanti*